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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/771,289	02/05/2004	Cyril Meziere	07552.0022	2868
22852	7590	02/29/2008		
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER DEAK, LESLIE R	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 02/29/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/771,289

Applicant(s)

MEZIERE ET AL.

Examiner

LESLIE R. DEAK

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 and 37-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 and 37-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following rejection with a corrected statement of rejection of the claims in view of Belokin and Shah replaces the rejection of 4 February 2007

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-35 and 37-40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In amended claim 1, Applicant claims a "plurality of support elements" in line 5. Neither Applicant's specification nor the drawings provide support for more than a single support element. Applicant's specification repeatedly refers to "the support element 3" and the drawings show only one support element in FIGS 1-4 and 6. The deficiency of the independent claim is imputed to all its dependent claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-20, 24-28, and 37-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,355,161 to Shah et al.

In the specification and figures, Belokin discloses the apparatus as claimed by applicant. With regard to claims 1-4, 15-18, and 39-40, Belokin discloses a support device for liquid containers that is capable of being used with an extracorporeal blood machine, comprising a base body 13 and a plurality of support elements 11/17, 12/17, wherein the support elements are slidable or rotatable around the base body, creating a horizontal displacement of part of the support elements with respect to the base body (see FIG 5, column 3, line 47 to column 5, line 13). With regard to applicant's limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support for easy access while loading the bags, and rotated inward of the support in a work position for compact location near the patient.

Belokin fails to disclose an end stop, controller, and position sensor. Shah discloses a dialysis system and an apparatus and method for loading bottles of solution into the system. The apparatus includes a support element 102 that holds solution container 20. The apparatus further comprises a motor 202 with an upper and lower limit sensor and assembly 208 that controls movement of the bottle from the loading position to the work position (see column 12, lines 1-50). While the limit sensor and position assembly do not comprise grooves as claimed by applicant, it is the position of

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the examiner that the Shah reference teaches that such upper and lower endrun stops are desirable in the art, and that it would have been obvious to one having ordinary skill in the art to try a reasonable number of well-known mechanical stop mechanisms to provide the end stop claimed by applicant. Accordingly, applicant's claimed structure is not a patentable improvement over the prior art.

With regard to applicant's recitation that the control device enables contemporary extraction of a number of supports, the recitation is considered by the Examiner to be a statement of the intended use of the device. It has been held that recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus that satisfies the structural limitations. See MPEP 2114. In the instant case, it is the position of the Examiner that the motor/controller disclosed by Shah is capable of being programmed to operate in the manner claimed by applicant, rendering the instant claims unpatentable over the prior art.

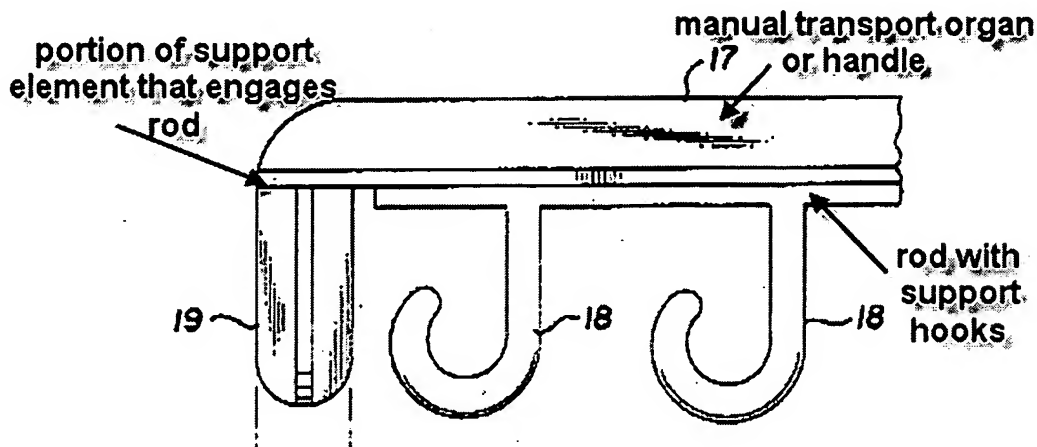
With regard to claims 5 and 6, the support elements 11/17, 12/17 comprise arms that are slidable or movable within supports 21, meeting the limitations of the claims.

With regard to claim 7, the support elements 17 comprise hooks 18 for supporting a container.

With regard to claims 8-13, 24, the support elements comprise a body or rod that carries a top section that may be used as a manual transport organ or handle to rotate the support elements or arms. The body or rod further comprises hooks 18 and is

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connected to the support element. See Belokin FIG2, as annotated by the Examiner, below.



With regard to claim 14 and the limitations drawn to a loading position and a work position, the Belokin device is capable of being operated as claimed in that the arms 17 may be swung outward of the support (maximum extraction) for easy access while loading the bags, and rotated inward of the support (minimum extraction) in a work position for compact location near the patient.

With regard to claims 19-20, Shah discloses that the apparatus may comprise a Hall position sensor in order to determine the position of the containers 20 within the system (see column 14, lines 35-42). Accordingly, it would have been obvious to one having ordinary skill in the art at the time of invention to add a position sensor as disclosed by Shah to the support apparatus disclosed by Belokin in order to determine the position of the elements within the system, as taught by Shah.

With regard to claim 25, applicant claims the intended use of the device. It has been held that a recitation with respect to the manner in which a claimed apparatus is

intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the instant case, the device suggested by the prior art is capable of being loaded in the operative loading position, meeting the limitations of the claims.

With regard to claims 26-28 and 37, applicant claims the intended operation of the stop means. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the instant case, the combined device suggested by Belokin and Shah is capable of being operated as claimed by applicant, meeting the limitations of the claims.

With regard to claim 38, Applicant claims an analog or digital control device, which includes the motor assembly disclosed by Shah, meeting the limitations of the claims.

6. Claims 21-23 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,390,311 to Belokin in view of US 6,355,161 to Shah et al, further in view of US 5,722,947 to Jeppsson et al. .

In the specification and figures, the prior art suggests the apparatus substantially as claimed by applicant (see rejection above) with the exception of a weighing means. Jeppsson discloses a dialysis system comprising a support element for holding solution containers (see FIG 1) and a weighing device 7 for weighing the containers and a

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regulating system 6 for controlling fluid flow based on the weighed containers (see columns 3-4), therefore comprising a measuring and/or control balance. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to add a weighing and control system as disclosed by Jeppsson to the support system suggested by the prior art in order to control fluid flow through the system, as taught by Jeppsson.

Response to Arguments

7. Applicant's amendment and arguments filed 21 November 2008 have been entered and fully considered.

8. Applicant's arguments with respect to the 35 USC 102(e) rejections over Belokin have been considered but are moot in view of the new ground(s) of rejection over Belokin and Shah as presented above.

9. Applicant's arguments with regard to the 35 USC 103(a) rejections over Belokin and Shah have been fully considered but they are not persuasive.

Applicant argues that the combination of Belokin and Shah do not operate in the manner claimed by applicant. However, It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. See MPEP 2114. In the instant case, the combined device suggested by Belokin and Shah is capable of being operated as claimed by applicant, meeting the limitations of the claims.

Applicant further argues that the control device of the instant invention is operable to move several support elements at once. The Examiner notes that such a function is not enabled by the specification, which only enables the contemporaneous movement of several **arms**, not **support elements** at the same time. Nonetheless, it is the position of the Examiner that the control means disclosed by Shah is capable of being programmed to move multiple elements at once, thereby meeting the limitations of the claims.

10. Applicant's arguments with respect to the 35 USC 103(a) rejections over Belokin in view of Jeppson have been considered but are moot in view of the new ground(s) of rejection over Belokin, Shah, and Jeppson as presented above.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

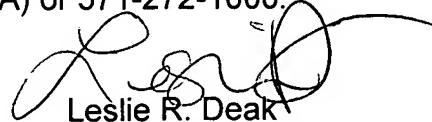
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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LESLIE R. DEAK whose telephone number is (571)272-4943. The examiner can normally be reached on Monday - Friday, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Leslie R. Deak
Patent Examiner
Art Unit 3761
14 February 2008